



Fee
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3-11-04 *Imry* *RCE*
1644

PTO/SB/30 (09-03)

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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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Request For Continued Examination (RCE) Transmittal Address to: MS RCE Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450	Application Number	08/765,695
	Filing Date	July 25, 1997
	First Named Inventor	Lars Abrahmsen
	Art Unit	1644
	Examiner Name	R. B. Schwadron
	Attorney Docket No.	HO-P01525US0

This is a Request for Continued Examination (RCE) under 37 CFR 1.114 of the above-identified application.
Request for Continued Examination (RCE) practice under 37 CFR 1.114 does not apply to any utility or plant application filed prior to June 8, 1995, or to any design application.

1. **Submission required under 37 CFR 1.114** Note: If the RCE is proper, any previously filed unentered amendments and amendments enclosed with the RCE will be entered in the order in which they were filed unless applicant instructs otherwise. If applicant does not wish to have any previously filed unentered amendment(s) entered, applicant must request non-entry of such amendment(s).

a. ☒ Previously submitted. If a final Office action is outstanding, any amendments filed after the final Office action may be considered as a submission even if this box is not checked.

i. ☒ Consider the arguments in the Appeal Brief or Reply Brief previously filed on March 1, 2004

ii. ☐ Other _____

b. ☒ Enclosed

i. ☒ Amendment/Reply (*copy*)

iii. ☐ Information Disclosure Statement (IDS)

ii. ☐ Affidavit(s)/Declaration(s)

iv. ☐ Other _____

2. **Miscellaneous**

a. ☐ Suspension of action on the above-identified application is requested under 37 CFR 1.103(c) for a period of _____ months. (Period of suspension shall not exceed 3 months; Fee under 37 CFR 1.17(i) required)

b. ☐ Other _____

3. **Fees** The RCE fee under 37 CFR 1.17(e) is required by 37 CFR 1.114 when the RCE is filed.

a. ☐ The Director is hereby authorized to charge the following fees, or credit any overpayments, to Deposit Account No. _____

i. ☒ RCE fee required under 37 CFR 1.17(e) 03/12/2004 MGBREM1 00000108 09765695

ii. ☐ Extension of time fee (37 CFR 1.136 and 1.17) 01 FC:1801 **770.00 OP**

iii. ☐ Other _____

b. ☒ Check in the amount of \$ 770.00 enclosed

c. ☐ Payment by credit card (Form PTO-2038 enclosed)

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT REQUIRED			
Name (Print/Type)	Melissa W. Acosta	Registration No. (Attorney/Agent)	45,872
Signature		Date	March 8, 2004

Request for Continued Examination Transmittal	
I hereby certify that this correspondence is being deposited with the U.S. Postal Service as Express Mail, Airbill No. ER509326710US, in an envelope addressed to: MS RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date shown below.	
Dated: March 8, 2004	Signature: <u>Staci Harris</u> (Staci Harris)

Adjustment date: 03/21/2006 CKHLOK
03/12/2004 MGBREM1 00000108 09765695
01 FC:1801 -770.00 OP

Repln. Ref: 03/21/2006 CKHLOK 0009021500
DAH:062375 Name/Number:08765695
FC: 9204 \$770.00 CR



Docket No.: HO-P01525US0
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Lars Abrahmsen

Application No.: 08/765,695

Confirmation No.: 6468

Filed: July 11, 1994

Art Unit: 1644

For: A CONJUGATE BETWEEN A MODIFIED
SUPERANTIGEN AND A TARGET-SEEKING
COMPOUND AND THE USE OF THE
CONJUGATE

Examiner: R. B. Schwadron

**PETITION FOR REVIVAL OF APPLICATION ABANDONED UNINTENTIONALLY
UNDER 37 C.F.R. § 1.137(b)**

AND

**PETITION UNDER 37 C.F.R. § 1.183 FOR WAIVER OF THE TERMINAL DISCLAIMER
UNDER 1.137(c)**

Commission for Patents
P O Box 1450
Alexandria, VA 22313-1450

Applicants petition for revival of the instant unintentionally-abandoned application under 37 C.F.R. § 1.137(b). Pursuant to 37 C.F.R. § 1.137(b)(1-4), Applicants file with this petition statement:

- (1) a check for \$1215.00 including the petition fee of \$750.00 under 37 C.F.R. § 1.17(m),
- (2) an amendment after final rejection under 37 C.F.R. § 1.116,

25611501.1

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01/11/2006 LWDNDIM1 00000043 08765695

02 FC:1462

400.00 DP

(3) a showing that the entire period of delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 C.F.R. § 1.137(b) was unintentional,

(4) a petition under 37 C.F.R. § 1.183, including the fee under 37 C.F.R. § 1.17(h), demonstrating an extraordinary situation in which justice requires waiver of the terminal disclaimer requirements of 37 C.F.R. § 1.137(d),

(5) a request for a refund of the filing fee for a Request for Continued Examination, and

(6) a terminal disclaimer required under 37 C.F.R. § 1.137(d) conditioned on denial of the above listed petition under 37 C.F.R. § 1.183.

Pursuant to 37 C.F.R. § 1.137(b)(3), Applicant submits that the abandonment of the instant application was unintentional. Specifically, Applicant mistakenly filed an Request for Continued Examination, rather than a continuation application, in response to a Final Rejection dated September 8, 2003. (See attached EXHIBIT A). The USPTO did not realize the error either and continued examination through to allowance. Applicant paid the issue fee July 29, 2005. Thus, the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. 1.137(b) was unintentional. Applicant respectfully requests the USPTO revive the abandoned application and accept the co-submitted amendment after final rejection. The amendment should bring the specification and claims into the previously allowed form.

Applicant further petitions under 37 C.F.R. § 1.183 for waiver of the terminal disclaimer normally required by 37 C.F.R. § 1.37(d). The terminal disclaimer may be waived in "extraordinary" circumstances in the interest of "justice." An example of such circumstances is when the abandonment of the application caused no actual delay in prosecution. See MPEP

711.03(c)(II)(G). Applicant submits that the instant application falls within this recognized exception and respectfully requests the Commissioner waive the terminal disclaimer requirement. The MPEP clearly states:

In the event that an applicant considers the requirement for a terminal disclaimer to be inappropriate under the circumstances of the application at issue, the applicant should file a petition under 37 CFR 1.183 (and petition fee) to request a waiver of this requirement of 37 CFR 1.183. Such a petition may request waiver of this requirement *in toto*, or to the extent that such requirement exceeds the period considered by applicant as the appropriate period of disclaimer. The grant of such a petition, however, is strictly limited to situations wherein applicant has made a showing of an "extraordinary situation" in which "justice requires" the requested relief. An example of such a situation is when the abandonment of the application caused no actual delay in prosecution (e.g., an application awaiting decision by the Board of Appeals and Interferences during period of abandonment).

MPEP 711.03(c)(II)(G) (emphasis added).

Prosecution was closed on April 29, 2005, the date the Notice of Allowance was issued. Therefore, no part of the entire period of the abandonment of the application caused any delay in prosecution. Therefore, the facts of the present case fit exactly in the MPEP's express example of when a terminal disclaimer should be waived. Therefore, applicants respectfully petition that the requirement for a terminal disclaimer be waived.

Applicant also requests, under 37 CFR 1.26, a refund of the Request for Continued Examination filing fee mistakenly paid. (See EXHIBIT A, pg 2). Please deposit the refund in Fulbright & Jaworski Deposit Account No. 06-2375.

Applicant is submitting a terminal disclaimer required under 37 C.F.R. § 1.137(d) for completeness of the petition to revive. This disclaimer is expressly conditioned on denial of the petition under 37 C.F.R. § 1.183 to waive the disclaimer requirement. Should the terminal

disclaimer be waived, please refund the \$65.00 fee to Fulbright & Jaworski Deposit Account No. 06-2375.

Pursuant to 37 C.F.R. § 1.17(m) the revival petition fee of \$750.00 has been included. Pursuant to 37 C.F.R. § 1.17(f) the petition for suspension of the rules fee of \$400.00 is also enclosed. Pursuant to 37 C.F.R. § 1.20(d) a terminal disclaimer filing fee of \$65.00 is enclosed. Should any other fees be due, or the attached fee be deficient or absent, the Commissioner is authorized to withdraw the appropriate fee from Fulbright & Jaworski Deposit Account No. 06-2375 (P01525US0), from which the undersigned is authorized to draw.

Please date stamp and return the enclosed postcard to evidence receipt of this document.

Respectfully submitted,



DAVID L. FOX
Reg. No. 40,612
FULBRIGHT & JAWORSKI L.L.P.
1301 McKinney, Suite 5100
Houston, Texas 77010-3095
(713) 651-8464
(713) 651-5246 (Fax)
Attorney for Applicants

Date: January 9, 2006

UNITED STATES PATENT & TRADEMARK OFFICE
Washington, D.C. 20231

REQUEST FOR PATENT FEE REFUND										
1 Date of Request: <u>3-20-06</u>		2 Serial/Patent # <u>08/765,695</u>								
3 Please refund the following fee(s):		4 PAPER NUMBER	5 DATE FILED	6 AMOUNT						
	Filing			\$						
	Amendment			\$						
	Extension of Time			\$						
	Notice of Appeal/Appeal			\$						
	Petition			\$						
	Issue			\$						
	Cert of Correction/Terminal Disc.			\$						
	Maintenance			\$						
	Assignment			\$						
<input checked="" type="checkbox"/>	Other (RCE)	1FW	3-9-04	\$ 770. ⁰⁰						
		7 TOTAL AMOUNT OF REFUND		\$						
		8 TO BE REFUNDED BY:								
10 REASON:		Treasury Check								
	Overpayment	Credit Deposit A/C #:								
	Duplicate Payment	9 <table border="1" style="display: inline-table; border-collapse: collapse;"><tr><td style="width: 20px; text-align: center;">0</td><td style="width: 20px; text-align: center;">6</td><td style="width: 20px; text-align: center;">--</td><td style="width: 20px; text-align: center;"></td><td style="width: 20px; text-align: center;"></td><td style="width: 20px; text-align: center;"></td></tr></table>			0	6	--			
0	6	--								
<input checked="" type="checkbox"/>	No Fee Due (Explanation):									
<u>RCE improper</u>										
11 REFUND REQUESTED BY:										
TYPED/PRINTED NAME: <u>DEREK L. Woods</u>		TITLE: <u>Attorney</u>								
SIGNATURE: <u>[Signature]</u>		PHONE: <u>2-3232</u>								
OFFICE: <u>Petitions</u>										
***** THIS SPACE RESERVED FOR FINANCE USE ONLY: *****										
APPROVED: <u>[Signature]</u>		DATE: <u>3/21/06</u>								

Instructions for completion of this form appear on the back. After completion, attach white and yellow copies to the official file and mail or hand-carry to:

Office of Finance
Refund Branch
Crystal Park One, Room 802B



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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

FEE TRANSMITTAL for FY 2004

Effective 10/01/2003, Patent fees are subject to annual revision.

☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 770.00

Attorney Docket No. HO-P01525US0

Complete if Known

Application Number 08/765,695

Filing Date July 25, 1997

First Named Inventor Lars Abrahmsen

Examiner Name R. B. Schwadron

Art Unit 1644

METHOD OF PAYMENT (check all that apply)

☒ Check ☐ Credit Card ☐ Money Order ☐ Other ☐ None

☐ Deposit Account:

Deposit
Account
Number

06-2375

Deposit
Account
Name

Fulbright & Jaworski L.L.P.

The Director is authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☒ Credit any overpayments

☒ Charge any additional fee(s) or any underpayment of fee(s)

☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

FEE CALCULATION

1. BASIC FILING FEE

Large Entity Small Entity

Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description	Fee Paid
1001	770	2001	385	Utility filing fee	
1002	340	2002	170	Design filing fee	
1003	530	2003	265	Plant filing fee	
1004	770	2004	385	Reissue filing fee	
1005	160	2005	80	Provisional filing fee	

SUBTOTAL (1) (\$) 0.00

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Total Claims	Extra Claims	Fee from below	Fee Paid
	** =	x	=
Independent Claims	** =	x	=
Multiple Dependent			=

Large Entity Small Entity

Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description
1202	18	2202	9	Claims in excess of 20
1201	88	2201	43	Independent claims in excess of 3
1203	290	2203	145	Multiple dependent claim, if not paid
1204	88	2204	43	** Reissue independent claims over original patent
1205	18	2205	9	** Reissue claims in excess of 20 and over original patent

SUBTOTAL (2) (\$) 0.00

** or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)

3. ADDITIONAL FEES

Large Entity Small Entity

Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description	Fee Paid
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet	
1053	130	1053	130	Non-English specification	
1812	2,520	1812	2,520	For filing a request for ex parte reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	
1251	110	2251	55	Extension for reply within first month	
1252	420	2252	210	Extension for reply within second month	
1253	950	2253	475	Extension for reply within third month	
1254	1,480	2254	740	Extension for reply within fourth month	
1255	2,010	2255	1,005	Extension for reply within fifth month	
1401	330	2401	165	Notice of Appeal	
1402	330	2402	165	Filing a brief in support of an appeal	
1403	290	2403	145	Request for oral hearing	
1451	1,510	1451	1,510	Petition to institute a public use proceeding	
1452	110	2452	55	Petition to revive - unavoidable	
1453	1,330	2453	665	Petition to revive - unintentional	
1501	1,330	2501	665	Utility issue fee (or reissue)	
1502	480	2502	240	Design issue fee	
1503	640	2503	320	Plant issue fee	
1460	130	1460	130	Petitions to the Commissioner	
1807	50	1807	50	Processing fee under 37 CFR 1.17(q)	
1806	180	1806	180	Submission of Information Disclosure Stmt	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	770	2809	385	Filing a submission after final rejection (37 CFR 1.129(a))	
1810	770	2810	385	For each additional invention to be examined (37CFR 1.129(b))	
1801	770	2801	385	Request for Continued Examination (RCE)	770.00
1802	900	1802	900	Request for expedited examination of a design application	

Other fee (specify)

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$) 770.00

SUBMITTED BY

Name (Print/Type) Melissa W. Acosta

Registration No. (Attorney/Agent) 45,872

(Complete if applicable)

Telephone (713) 651-5407

Signature

Date

March 8, 2004

Fee Transmittal

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as Express Mail, Airbill No. ER509326710US, in an envelope addressed to: MS RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date shown below.

Dated: March 8, 2004

Signature: *Staci Harris* (Staci Harris)